

HOUSE BILL NO. 100

INTRODUCED BY MAEDJE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~REQUIRING A SEARCH WARRANT TO CONTAIN THE FACTS AND DESCRIPTIONS CONTAINED IN THE APPLICATION FOR THE WARRANT; REQUIRING THAT THE PERSON SERVED BE ALLOWED SUFFICIENT TIME TO READ THE WARRANT; REQUIRING PERSONS AT SEARCHED PREMISES~~ TO BE RESTRAINED IN THE LEAST RESTRICTIVE MANNER CONSISTENT WITH THE SAFETY OF THE PERSON OR PERSONS PERFORMING THE SEARCH; ~~REQUIRING THAT THE ENTRY AND SEARCH MUST BE PERFORMED IN THE MANNER THAT IS LEAST DISRUPTIVE OF THE PREMISES, WHICH MUST BE RETURNED BY THE SEARCHING PERSON OR PERSONS TO THE CONDITION IN WHICH THE PERSON OR PERSONS FOUND THE PREMISES; AND AMENDING SECTIONS 46-5-221, 46-5-227, AND SECTION~~ 46-5-228, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1. Section 46-5-221, MCA, is amended to read:~~

~~"46-5-221. Grounds for search warrant. (1) A judge shall issue a search warrant to a person upon application, in writing or by telephone, made under oath or affirmation, that:~~

~~(1)(a) states facts sufficient to support probable cause to believe that an offense has been committed;~~

~~(2)(b) states facts sufficient to support probable cause to believe that evidence, contraband, or persons connected with the offense may be found;~~

~~(3)(c) particularly describes the place, object, or persons to be searched; and~~

~~(4)(d) particularly describes who or what is to be seized.~~

~~(2) The warrant, including a warrant issued by telephone under 46-5-222, must contain the facts and descriptions required by subsection (1) to be contained in the application for the warrant and a statement by the judge that the judge considers the facts to support probable cause to believe that an offense has been committed and that evidence, contraband, or persons connected with the offense may be found."~~

~~Section 2. Section 46-5-227, MCA, is amended to read:~~

~~"46-5-227. Service and return of search warrant. Service of a search warrant is made by exhibiting~~

1 ~~the original warrant or a duplicate original warrant at the place or to the person to be searched. The officer taking~~
2 ~~property under the warrant shall give to the person from whom or from whose premises the property is taken~~
3 ~~a copy of the search warrant and a receipt for the property taken and shall allow the person sufficient time to~~
4 ~~read the warrant before beginning the search or shall leave the copy and receipt at the place from which the~~
5 ~~property was taken. Failure to leave a copy and receipt may not render the property seized inadmissible at trial."~~

6
7 **Section 1.** Section 46-5-228, MCA, is amended to read:

8 **"46-5-228. Procedures assisting in execution of service of search warrant.** (1) All necessary and
9 reasonable force may be used to serve a search warrant or to effect an entry into any building, property, or
10 object to serve a search warrant, but any restraint or detention of the person served must be in the least
11 restrictive manner that is consistent with the safety of the person serving the warrant and anyone assisting that
12 person. The entry and search must be performed in the manner that is least disruptive of the premises, which
13 must be returned by the searching person or persons to the condition in which the person or persons found the
14 premises.

15 (2) The person serving the search warrant may reasonably detain and search any person on the
16 premises being searched at the time of the search, but must do so in the least restrictive manner that is
17 consistent with the safety of the person serving the warrant and anyone assisting that person. The search of
18 persons on the premises is:

19 (a) ~~for self-protection~~ protection of the person serving the warrant and anyone assisting that person;

20 or

21 (b) to prevent the disposal or concealment of any evidence, contraband, or persons particularly
22 described in the warrant."

23 - END -